

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 26, 2004, Work Session**

AGENDA ITEM NO.: 9

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Towing Ordinance**

RECOMMENDATION: Authorize staff to schedule a public hearing to receive comment regarding the manner in which the City handles disabled, unattended, or abandoned vehicles.

SUMMARY: Last year, City Council was asked to re-establish a Towing Advisory Board to make recommendations regarding the City's procedures for the towing of disabled, unattended or abandoned vehicles. This resulted from an inquiry by the owner of a local wrecker service regarding the City's procedures and the discovery that a contract previously awarded for towing services had expired in 1998. Please see the attached Council Report from the August 13, 2003 Work Session for further background information.

The Towing Advisory Board (TAB) was re-established with nine members representing various stakeholders. The scope of work for the TAB was as follows:

- Examine present towing policy and procedures including City Code and any departmental policies.
- Make recommendations on any appropriate changes.
- Consider if the City should go to a rotation system or remain with the past practice of signing a contract with one tower.
- Determine minimum qualifications for either a single tower or multiple towers in a rotation system.
- Consider and make recommendations on other matters related to towing operations in the City as the advisory board deems appropriate. This should be limited to the towing of private vehicles, not the City's contract for towing City-owned vehicles.

The report of the TAB is attached. In summary, the TAB recommended, on a split vote, changing from the current system to a rotational system and suggested procedures and qualifications for such a system. The TAB was unable to reach a majority opinion on continuing the present practice of delivering towed vehicles to the dealership representing the manufacturer of the vehicle.

I believe that it is fair to say that opinions on this matter are diverse and strongly held. The tower who has provided this service to the City for years and a number of dealerships have expressed concerns as demonstrated in the attached correspondence.

It should also be noted that I am not aware of any complaints from either the Police Department or vehicle owners regarding the service provided under the present system. LynComm has expressed some concerns about keeping track of dealership/tower arrangements that change from time to time. This issue arose, however, due to the inquiry of a competing wrecker service owner about the equity of the present system and the discovery that there existed no valid contract for this service.

As City Council will ultimately have to resolve this issue, it is suggested that a public hearing be scheduled to receive comments on the TAB report. I have attached some additional thoughts for Council to consider as it deliberates this matter.

PRIOR ACTION(S): August 13, 2003, Council agreed to re-establish the Towing Advisory Board, Earlier actions are noted in the Council report for that meeting.

FISCAL IMPACT: N/A

CONTACT(S): Kimball Payne

ATTACHMENT(S): August 12, 2003 Council Report; Report of the Towing Advisory Board, Correspondence from interested parties; Thoughts Regarding the Towing Ordinance

REVIEWED BY: lkp

Thoughts Regarding the Towing Ordinance

Principles/Goals

- Remove disabled vehicles from the right-of-way as quickly and safely as possible
- Respect the wishes of the vehicle owner/operator to the greatest extent possible
- Minimize local government involvement; allow the private sector to operate in as unrestricted manner as possible
- Allow for as much competition as possible
- Support businesses located in the City

Stakeholders

There are various stakeholders with regard to the towing of disabled, unattended or abandoned vehicles. Each stakeholder raises unique concerns.

The public: The City is interested in maintaining public safety through the rapid and efficient removal of a disabled vehicle from the public right-of-way. City Council has the ultimate authority under the State Code to regulate police-requested towing in the City.

The vehicle owner/operator: should have maximum discretion in determining the companies that tow, store, and repair his or her vehicle. The owner/operator should be provided with competent and convenient service by all other stakeholders and should be charged a fair price for services rendered.

The tower, the automobile dealer, the body shop owner (the private sector): should be allowed operate their businesses in a fair and competitive environment. They are interested in maximizing business opportunity—there is money to be made by the tow itself, for storage of the vehicle and for repair.

The current system (a “preferred tower system”)

1. The vehicle owner/operator selects the towing firm and directs the disposition of the vehicle, if possible.
2. If the owner/operator has no preference, or is unable to make a decision, the vehicle is towed to the dealership selling that particular make by the towing company that the dealership has designated.
3. If the owner/operator has no preference, but would prefer that the vehicle not be taken to the dealership, or if there is no local dealership for the particular make, the City’s designated towing contractor is contacted and takes the vehicle to his secure storage facility

Options

1. Establish a system whereby pre-qualified towers provide wrecker services under a set rotation.
2. Award a contract award to a single tower who would provide wrecker services as in the current system. The City is not required to use competitive sealed bidding or competitive negotiation to award contracts for police-initiated towing, however, in a competitive environment, this is the most equitable approach.
3. Under either a rotation system or a single contract, and lacking owner direction, tow the disabled vehicle to the automobile dealer selling that particular make of vehicle. There are unresolved questions such as: What if the dealer is located outside of the City? What if there are two dealers of the same make? What is the City's obligation to provide business to dealerships or body shops located outside the City?
4. Under either method, allow the vehicle to be towed to a body shop. Many dealers have arrangements with specific body shops if they don't have their own body shop. The vehicle would probably be towed to the tower's secure storage yard first until a repair facility was selected by the owner which could result in additional charges.
5. Combine the contract for police-requested towing with the contract for the towing of City-owned vehicles. The current contractor has suggested that there is little business in only towing City-owned vehicles.
6. No regulation of towing—first come, first served (generally not a good idea).

TAB Recommendation

The advisory board recommends a rotation system with three alternatives for the disposition of the vehicle offered without a recommendation for one of the alternatives:

- a. The towing company determines the disposition either through agreements with dealers/body shops or storage at their secure lots. The City does not regulate beyond the initial tow.
- b. Require all vehicles to be towed to the dealership representing the vehicle manufacturer or their designated body shop.
- c. Require that vehicles be towed to the secure lot and await instructions (could lead to double towing, storage fees and higher costs).

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **August 12, 2003, Work Session**

AGENDA ITEM NO.: 5

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Reestablishment of the Towing Advisory Board**

RECOMMENDATION: Re-establish the Towing Advisory Board to make recommendations regarding the City's procedures for the towing of disabled, unattended or abandoned vehicles.

SUMMARY: The State Code authorizes localities to adopt ordinances regulating towing services (Attachment #1). The City Code section on this matter is attached for your reference (Attachment #2). It authorizes the City Manager to enter into contracts for the removal and storage of vehicles.

In July of 1993, City Council, as required by the State Code, established a Towing Advisory Board to "review future municipal approaches/provisions for towing services" (Attachment #3). The recommendations of the Towing Advisory Board were accepted by Council in September 1993 (Attachment #4) and a contract was awarded in November 1993 to single provider. The term of the contract was for two (2) years with the option to extend for three (3) one (1) year periods. The contract, which technically expired on October 31, 1998, has never been renewed or rebid. The provider that was awarded the contract continues to provide towing services under its terms.

The last reference to a Towing Advisory Board that has been found is a memorandum, dated November 29, 1999, from Major Jack Lewis to the City Attorney indicating that a number of individuals had agreed to serve on the Towing Advisory Board (Attachment #5). In November of 1999 the City entered into a contract for the towing of City fleet vehicles. That contract expires on October 31, 2004. Presently, the City's database on boards, committees and commissions does not include the Towing Advisory Board.

I have recently been approached by the owner of a local towing business who questioned the City's policy regarding towing services. In responding to his inquiry, I became aware of the information presented above. One of the individual's primary questions was why the City maintains an exclusive arrangement for towing services instead of providing for a rotation among qualified operators as is done in many other communities. He has provided the attached correspondence (Attachment #6) as an indication of his interest in this matter.

Considering changes to the City's towing policy, amending the ordinance, or awarding another contract would require re-establishing the Towing Advisory Board and is recommended. Preliminary discussions with the Police Department and LynCom indicate support for considering changes to the present arrangement.

PRIOR ACTION(S): As noted above.

FISCAL IMPACT: Not applicable.

CONTACT(S): Kimball Payne

ATTACHMENT(S): As indicated.

REVIEWED BY: lkp

Excerpt from the Code of Virginia, 1950, as amended.

§ 46.2-1217. Local governing body may regulate certain towing.

The governing body of any county, city, or town by ordinance may regulate services rendered pursuant to police towing requests by any business engaged in the towing or storage of unattended, abandoned, or immobile vehicles. The ordinance may include delineation of service areas for towing services, the limitation of the number of persons engaged in towing services in any area, including the creation of one or more exclusive service areas, and the specification of equipment to be used for providing towing service. The governing body of any county, city, or town may contract for services rendered pursuant to a police towing request with one or more businesses engaged in the towing or storage of unattended, abandoned, or immobile vehicles. The contract may specify the fees or charges to be paid by the owner or operator of a towed vehicle to the person undertaking its towing or storage and may prescribe the geographical area to be served by each person providing towing services. The county, city, or town may establish criteria for eligibility of persons to enter into towing services contracts and, in its discretion, may itself provide exclusive towing and storage service for police-requested towing of unattended, abandoned, or immobile vehicles.

Prior to adopting an ordinance or entering into a contract pursuant to this section, the local governing body shall appoint an advisory board to advise the governing body with regard to the appropriate provisions of the ordinance or terms of the contract. The advisory board shall include representatives of local law-enforcement agencies, towing and recovery operators, and the general public.

"Police-requested towing" or "police towing request," as used in this section, includes all requests made by a law-enforcement officer of the county, city, or town or by a State Police officer within the county, city, or town pursuant to this article or Article 2 (§ [46.2-1209](#) et seq.) of this chapter and towing requests made by a law-enforcement officer at the request of the owner or operator of an unattended, abandoned, or immobile vehicle, when no specific service provider is requested by such owner or operator.

If an unattended, abandoned, or immobile vehicle is located so as to impede the free flow of traffic on a highway declared by resolution of the Commonwealth Transportation Board to be a portion of the interstate highway system and a law-enforcement officer determines, in his discretion, that the business or businesses authorized to undertake the towing or storage of the vehicle pursuant to an ordinance or contract adopted pursuant to this section cannot respond in a timely manner, the law-enforcement officer may request towing or storage service from a towing or storage business other than those authorized by such ordinance or contract.

(Code 1950, § 46-5.1; 1956, c. 114; 1958, c. 541, §§ 46.1-3, 46.1-3.02; 1960, cc. 75, 204; 1966, c. 297; 1972, c. 267; 1974, c. 142; 1977, c. 666; 1980, c. 551; 1978, c. 282; 1984, cc. 64, 190, 381; 1985, c. 91; 1988, c. 520; 1989, c. 727; 1993, c. 405; 1999, c. 78.)

Excerpt from the City Code

DIVISION 2. REMOVAL OF UNATTENDED, ABANDONED, ETC., VEHICLES*

***Cross reference**—Inoperative vehicles, § 21-61 et seq.

Sec. 25-275. Removal authorized.

Whenever any motor vehicle, trailer or semitrailer is found on the public streets or public grounds unattended by the owner or operator and constitutes a hazard to traffic or is parked in such manner as to be in violation of law or whenever any motor vehicle, trailer or semitrailer is left unattended for more than ten (10) days upon any public property or privately owned property other than the property of the owner of such motor vehicle, trailer or semitrailer, within the city, or is abandoned upon such public property or privately owned property, without the permission of the owner, lessee or occupant thereof, or whenever any motor vehicle, trailer or semitrailer is stalled or rendered immobile as the result of adverse weather conditions or other emergency situations on any public roadway, any such motor vehicle, trailer or semitrailer may be removed for safekeeping by or under the direction of a police officer to a storage garage or area provided; however, that no such vehicle shall be so removed from privately owned premises without the written request of the owner, lessee or occupant thereof. For purposes of this division it shall be presumed that such motor vehicle, trailer or semitrailer, or part thereof, is abandoned if (1) it lacks either: (a) a current license plate, or (b) a current county, city or town plate or sticker or (c) a valid state inspection certificate or sticker and (2) it has been in a specific location for four (4) days without being moved. (Code 1959, § 20-147; Ord. No. O-88-013, § 1, 1-26-88)

State law reference—Authority to provide for removal of unattended, abandoned, etc., motor vehicles, Code of Virginia, §46.2-1213.

Sec. 25-276. Liability.

The person at whose request a motor vehicle, trailer or semitrailer is removed from privately owned property under the provisions of this division shall indemnify the city against any loss or expense incurred by reason of removal, storage or sale thereof. (Code 1959, § 20-147)

Sec. 25-277. Notice generally.

Each removal of a vehicle under the provisions of this division shall be reported immediately to the chief of police, who shall give notice to the owner of the motor vehicle, trailer or semitrailer as promptly as possible. (Code 1959, § 20-147)

Sec. 25-278. Redemption by owner.

The owner of any motor vehicle, trailer or semitrailer removed under the provisions of this division, before obtaining possession thereof, shall pay to the city all reasonable costs incidental to the removal, storage and location of such owner. (Code 1959, § 20-147)

Sec. 25-279. Sale authorized.

Should the owner of a vehicle removed under the provisions of this division fail or refuse to pay the costs of such removal and storage thereof, or should the identity or whereabouts of such owner be unknown or unascertainable after a diligent search has been made, and after notice to him at his last-known address and to the holder of any lien of record in the office of the state division of motor vehicles, the chief of police after holding the motor vehicle, trailer or semitrailer thirty (30) days and after due notice of sale, dispose of the same at public sale and the proceeds from such sale shall be forwarded by the chief of police to the city collector. (Code 1959, § 20-147; Ord. No. O-88-013, § 1, 1-26-88)

Sec. 25-280. Value less than one hundred fifty dollars.

If the value of any motor vehicle, trailer or semitrailer removed under the provisions of this division be determined by three (3) disinterested dealers or garagemen to be less than one hundred fifty dollars (\$150.00) which would be incurred by such advertising and public sale, it may be disposed of by private sale or junked. (Code 1959, § 20-147; Ord. No. O-88-013, § 1, 1-26-88)

Sec. 25-281. Disbursement of proceeds from sale.

The city collector shall pay from the proceeds of the sale of any motor vehicle removed under the provisions of this division the cost of removal, storage, investigation as to ownership and liens and notice of sale, and the balance of such funds shall be held by him for the owner of such vehicle and paid to him upon satisfactory proof of ownership. (Code 1959, § 20-147)

Sec. 25-282. Special fund.

If no claim has been made by the owner of any motor vehicle, trailer or semitrailer removed and sold under the provisions of this division for the proceeds of such sale, after the payment of the cost of administering this division, the funds shall be deposited in a special fund established by the city for this purpose. Any such owner shall be entitled to apply to the city within three (3) years from the date of such sale and if timely application is made therefor, the city will pay the same to the owner without interest or other charges. No claim shall be made nor shall any suit, action or proceeding be initiated for the recovery of such funds after three (3) years from the date of such sale. This section shall not operate to deprive the city of other remedies available under law to obtain payment from the owner of unattended, abandoned or immobile vehicles for towing, storage or services rendered. (Code 1959, § 20-147; Ord. No. O-88-013, § 1, 1-26-88)

Sec. 25-283. Contracts with private persons for removal, etc., of vehicles.

The city manager shall have the power to enter into contracts with the owner or operator of garages or places for the removal or storage of vehicles referred to in this division. The contracts shall provide for the payment by the city of reasonable charges for the removal and storage of such vehicles, shall require such owners or operators to deliver such vehicles to the owners thereof or to their agents upon demand therefor upon furnishing satisfactory evidence of identity and ownership or agency, and that the owners or operators of such garages or places of storage will indemnify the owners of such vehicles for injury or damage thereto resulting from the negligent removal or storage thereof, and such owners or operators shall be required to provide themselves with adequate liability insurance to cover such indemnity. (code 1959, § 20-148)

LYNCHBURG CITY COUNCIL REPORT

MEETING DATE: July 13, 1993REPORT NUMBER: 50

SYNOPSIS Periodically, a municipal contract is awarded for the towing of disabled vehicles, including privately-owned immobile, unattended, or disabled vehicles upon authorization by the Police Department. In the past such contract has been awarded to a single towing company as a result of competitive sealed bidding.

The 1993 Virginia General Assembly amended the Code of Virginia to require local governing bodies to appoint an advisory board to advise the governing body with regard to the appropriate terms of any future towing contract or the provisions of towing ordinance(s). Such advisory board must include representatives of law enforcement agencies, towing/recovery operators, and the general public. Accordingly, the following resolution is presented for Council consideration.

REQUIRED ACTION

#R-93-218

BE IT RESOLVED That a six (6) member Towing Advisory Board is established to make recommendations to City Council concerning the terms of future municipal contracts for towing services and the provisions of the City Code with regard to towing in general;

BE IT FURTHER RESOLVED That the Task Force will include two (2) towing/recovery operators, one (1) law enforcement officer, and three (3) members of the general public with representatives of one (1) member from each of the following groups: automobile dealerships; automotive repair shops; and insurance industry; and

BE IT FURTHER RESOLVED That the initial report/written recommendations of such Towing Advisory Board shall be provided to City Council on or before September 1, 1993.

Adopted: July 13, 1993

Certified:

Patricia W. Kost
Clerk of Council

A-7BACKGROUND

The current municipal towing contract will expire on October 31, 1993. Before proceeding with a replacement contract, the services of a Towing Advisory Board are required by the Code of Virginia.

cc: Robert Burgess
Pat Kost

FORM EE AGENDA ITEM #APPT.

CITY COUNCIL MEETING OF JULY 22, 1993

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// In the matter of Appointments, and on nomination of Council Member MacCallum, Council by the following recorded vote appointed Cecil Staton, Glenn Trent, Holcolme Hughes, Sr., Robert Babcock, Chuck Helwig, and Cmdr. Ronald Coleman to serve on the Towing Advisory Board for terms ending September 30, 1993:

Ayes: Cobbs, Curling, Haskins, MacCallum, Whitaker, Adams	6
Noes:	0
Absent: Carey	1